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9.13.19

FILED WITH LRC TIME: 11am
SEP 13 2019
Emily B. Caudill REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 25:050. Factors and agents.

5 RELATES TO: KRS 139.010, 139.200, 139.340

6 STATUTORY AUTHORITY: KRS 131.130(4)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations for the administration and
9 enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax
10 law as it applies to transactions involving factors and agents.

11 Section 1. Definitions. (1) "Factors" and "agents" means persons, excluding marketplace
12 providers, to whom products are consigned, entrusted, or delivered by a principal owner for the
13 purpose of selling.

14 (2) "Marketplace providers" is defined by KRS 139.010.

15 (3) "Principal owner" means a person who has the primary and ultimate ownership of the
16 products for sale.

17 (4) "Products" means tangible personal property, digital property, and services subject to sales
18 tax according to the provisions of KRS 139.200.

19 Section 2. Factors and agents are retailers. (1) Factors and agents shall be considered the
20 retailers of products sold and shall include the retail-selling price of the products in their gross

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1 receipts and shall be liable for the sales and use tax thereon unless the principal owner:

2 (a) Holds a retail permit under KRS Chapter 139;

3 (b) Reports the retail-selling price of the products in its gross receipts; and

4 (c) Remits the sales and use tax thereon.

5 (2) The delivery in this state of products by a factor or agent of a principal owner that is a
6 retailer not doing business in this state as provided in KRS 139.340 shall be considered a retail
7 sale by the factor or agent. The factor or agent shall include the retail-selling price of the products
8 in their gross receipts and shall be liable for the sales and use tax thereon except under the principal
9 owner stipulations provided in subsection (1) of this section.


10 ~~[Section 1. A factor, or agent of an owner, or former owner or factor, to whom property is~~
11 ~~consigned, entrusted, or otherwise delivered for the purpose of selling shall be considered the~~
12 ~~retailer of such property when sold. Said factor, or agent, shall include the retail selling price of~~
13 ~~said property in his gross receipts and be liable for the sales tax thereon; provided, however, that~~
14 ~~said factor or agent need not include the retail selling price of the subject property in his gross~~
15 ~~receipts in those instances where the principal involved is a retail permit holder under the~~
16 ~~Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject~~
17 ~~property in his gross receipts.~~

18 ~~Section 2. The delivery in this state by a factor, or agent of an owner, or former owner or~~
19 ~~factor, to a consumer or person for redelivery to a consumer pursuant to a retail sale made by a~~
20 ~~retailer not engaged in business in this state shall be considered a retail sale. Said factor, or agent,~~
21 ~~shall include the retail selling price of said property in his gross receipts and be liable for the sales~~
22 ~~tax thereon; provided, however, that said factor or agent need not include the retail selling price of~~
23 ~~the subject property in his gross receipts in those instances where the principal involved is a retail~~

- 1 ~~permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail~~
- 2 ~~selling price of the subject property in his gross receipts.]~~

103 KAR 25:050

APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Sept. 12, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 25:050

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 25:050 to add definitions for "factors," "agents," and "products" by moving them into Section 1 to comply with regulatory requirements; adding definitions for "principal owner" and "marketplace provider;" updating the regulation regarding digital property and taxable services, and updating general statutory language as it applies to transactions regarding factors and agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to providing up to date guidance on the tax treatment of transactions made by factors and agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this administrative regulation will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, or organizations operating as retailers, specifically the defined factors and agents.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No specific impact to those entities detailed in Question 3 are noted based upon the amendments made. Additional guidance is being provided to those entities detailed in Question 3 regarding the topics already included in the said regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3 based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to who is required to collect the sales tax in transactions involving factors and agents and as such remain in good standing with the Department of Revenue

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 25:050

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

(d) How much will it cost to administer this program for subsequent years? No additional costs should be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: